IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
("AFSCME") MICHIGAN COUNCIL 25 AND ITS
AFFILIATED AFSCME LOCALS 23 AND 2394,

Plaintiffs-Appellants,

-and-

DETROIT CITY COUNCIL, et al.,

Intervening Plaintiffs-Appellants,

v

CITY OF DETROIT AND
DETROIT HOUSING COMMISSION,

Defendants-Appellees.

Docket No. 122053

BRIEF ON APPEAL - APPELLANTS

ORAL ARGUMENT REQUESTED

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[i] Grand Rapids, supra is reproduced in its entirety on pages 438A-450A of Appellants' Appendix.

[ii] The pre-1996 and post-1996 text of MCL 125.655(3) is reproduced on pages 444A and 445A of Appellants' Appendix.

COURT RULES

CONSTITUTIONS, CHARTERS AND ORDINANCES

[iii] The Detroit City Charter is reproduced on pages 367A-432A of Appellants' Appendix.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

On November 19, 2002 this Court granted Appellants' Emergency Application for Leave to Appeal from the July 23, 2002 decision of the Court of Appeals below. This Court has jurisdiction over this appeal from the Court of Appeals' decision pursuant to MCR 7.301(A)(2) and MCR 7.302.

However, as noted below, one of the issues in this appeal is the Court of Appeals' erroneous assumption of jurisdiction pursuant to MCR 7.203(A) when there was admittedly no final judgment in the trial court. As is conceded in the Court of Appeals' decision, the trial court's orders on appeal only adjudicated Count II of Plaintiffs-Appellees' First Amended Complaint. See Argument I below.

STATEMENT OF QUESTIONS INVOLVED

1. Did the Court of Appeals erroneously assume jurisdiction of Defendants-Appellees' claim of appeal below where :

a. The parties had only moved for summary disposition on Count II of Plaintiff-Appellants AFSCME's first amended complaint;

b. The trial court's orders only addressed Count II of that complaint;

c. Count I of AFSCME's complaint was still awaiting adjudication; and

d. There was no final order or judgment within the meaning of MCR 7.202(7) and MCR 7.203(A)(1).

The Court of Appeals said: No.

Plaintiff-Appellants say: Yes.

2. Was the Court of Appeals' decision, which held that the 1996 Amendments to Michigan's Housing Facilities Act ("Act"), MCL 125.651 et seq. retroactively severed Defendants-Appellee's City of Detroit's ("City") employment relationship with employees assigned to Defendants-Appellee Detroit Housing Commission ("DHC") "by operation of law," erroneous where:

a. The Court of Appeals ignored the plain meaning of the Act. While it expressly grants housing commissions unfettered authority in certain areas, the Act does **not** grant them complete independence with respect to employment issues and explicitly continues the cities' control over housing employee classifications and compensation;

The Court of Appeals said: No.

Plaintiff-Appellants say: Yes.

b. The Court of Appeals' order **conflicts** with another decision of the Court of Appeals, Grand Rapids Employees Independent Union v City of Grand Rapids, 235 Mich App 398 (1999), where the Court of Appeals previously held that the 1996 amendments reserve housing employee compensation and

classification authority to the city and that a housing commission is an independent employer only in the absence of a city resolution to the contrary;

The Court of Appeals said: No.

Plaintiff-Appellants say: Yes.

c. The Court of Appeals disregarded and misstated the undisputed record below, which showed that the City affirmatively exercised its reserved compensation and classification role with respect to housing employees after 1996 when:

(i) The City Council continued to control housing employees' compensation and classifications;

(ii) Those employees have remained in the City executive organization plan;

(iii) Those employees have remained in the City pension and health benefits plans;

(iv) The City housing ordinance expressly continued to control their compensation and classifications; and

(v) The City Council's September and October, 2001 resolutions and amendments to the housing ordinance reaffirmed the City's employment relationship with housing employees;

The Court of Appeals said: No.

Plaintiff-Appellants say: Yes.

d. The Court of Appeals failed to consider whether in the circumstances of this case - - where the employment relationship has continued after 1996 - - future changes in the status of housing employees can only be effectuated in accordance with both the Act and Detroit City Charter, the latter of which defines the mayor and city council's respective roles in that process;

The Court of Appeals said: The Court failed to address this issue.

Plaintiff-Appellants say: Yes.

e. Although the City Council's recent ordinances and resolutions are consistent with the Act, even if they were not, the preexisting City housing ordinance, the existing compensation and classification plans and the existing executive organization plan, could only be amended by mayoral **and** City Council action pursuant to the City Charter.

The Court of Appeals said: No.

Plaintiff-Appellants say: Yes.

STATEMENT OF FACTS AND MATERIAL PROCEEDINGS BELOW

I. THE FACTS[1]

A. The Employees Of The City And DHC.

Plaintiffs-Appellants American Federation of State, County and Municipal Employees, Michigan Council 25 and its affiliated Locals 23 and 2394 (collectively "AFSCME") represent more than 100 of the several hundred Defendant-Appellee City of Detroit ("City") employees who work at Defendant-Appellee Detroit Housing Commission ("DHC"). App 147A-148A.[2] As employees of both the City and DHC, AFSCME-represented employees have been and remain participants in the City pension and health plans and are covered by the City's compensation and classification system. App 147A-148A, 216A-235A, 322A.

B. While The City And HUD's 1995 And 1996 Agreements Enhanced DHC's Authority, They Still Continued The City's Employment Relationship With Housing Employees.

On December 15, 1995 the City and United States Department of Housing and Urban Development ("HUD") entered into a Partnership Agreement, which established certain goals for the City and DHC, one of which was the presentation of a "separation plan . . . to the City Council by January 31, 1996 and the creation of a 'Detroit Housing Commission.'" App 237A-242A. Pursuant to that Agreement, in February, 1996 the mayor asked Intervening Plaintiff-Appellant Detroit City Council ("City Council") to approve (1) his proposed amended executive organization plan, transferring public housing functions from the Detroit Housing Department to a Detroit

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[1] All of the facts recited were undisputed below.

[2] References to Appellants' Appendix will appear as "App" followed by applicable page.

Housing Commission and (2) a resolution which would enhance DHC's authority "in the areas of Management Information Systems, Finance, Budget, Purchasing and Human Resources." App 236A-250A.

The mayor's submission stressed that "this Resolution shall not be construed as changing or altering the status of City employees at Detroit Housing Department/Detroit Housing Commission with respect to rights and benefits granted to such employees by civil service or collective bargaining agreements." App 242A. On March 15, 1996 the City Council passed those resolutions enhancing DHC's authority on the basis requested by the mayor, i.e., without disturbing the City long-standing employment relationship with housing employees pursuant to the City's Charter, housing ordinance and resolutions. Id.

C. The Housing Act Is Amended Effective June 29, 1996.

Later that year the Michigan Legislature passed Public Act 338, amending the Michigan Housing Facilities Act, MCL 125.651 et seq., ("Housing Act") effective June 29, 1996.

D. After The Housing Act Is Amended, The Mayor Asks City Council To Approve A Revised Agreement With HUD Which Continues The Employment Relationship And Acknowledges That Additional Separation Will Require City Council Approval.

After the Housing Act was amended, the mayor and DHC sought and obtained the City Council's approval of a Revised Memorandum of Agreement between the City and HUD ("Revised MOA"). App 251A-320A. Signed by the mayor and HUD on October 14, 1996, the Revised MOA did not disturb the City's relationship with DHC employees and acknowledged that City would need City Council's approval to expand DHC's powers pursuant to the new Housing Act amendments, App 34A, 263A, 320A. The City's September 19, 1996 cover memorandum to City Council

similarly acknowledged that all future "changes in the revised MOA must have City Council's approval." App 251A.

In each of the years 1996, 1997, 1998, 1999, 2000 and 2001 and through June 30, 2002, the mayor annually recommended and the City Council annually reviewed and approved specific compensation and classifications for employees assigned to DHC. App 34A, 216A-235A. Throughout that time, DHC and housing employees remained in the City's executive organization, compensation and classification plans.[3] Id.

E. The Mayor Tries To Persuade City Council To Pass An Ordinance Yielding Employment Authority to DHC.

In 1997 the City tried to persuade City Council to amend the city housing ordinance to make DHC a completely "separate and independent employer." App 34A, 149A. On January 24, 1997 the City presented AFSCME with a document entitled "Housing Department Changes Being Contemplated." Id.; See also Court of Appeals App II, Ex 1(9). There, the City stated that "The Housing Commission was in the process of putting together a formal separation agreement to be placed before City Council by mid-January, 1997" and that if "the plan as now envisioned were to become effective, the Housing Commission would be the new employer and the City of Detroit would not have any residual employing entity role of any kind." Id.

The following year, the City prepared a 1998 Memorandum of Understanding which recited that "the City wishes to establish the operations currently maintained by the City's Housing Department as a separate and independent entity, the DHC" and which conditioned the

[3] The Court of Appeals erroneously described these as "lump sum" budgets. They were, in fact, not lump sum and entirely specific as to each DHC employee's classification and compensation. App 216A-235A.

Memorandum on the City Council's approval of proposed ordinances the mayor had presented. ("This Memorandum of Understanding shall take effect **if** the proposed amendments to Sections 14-5-1 et seq. of the City's ordinance now before the City Council is approved by City Council and the mayor before June 30, 1998.") Id.; See also Court of Appeals App II, Ex 1(10). (Emphasis added). On September 25, 1998 the mayor confirmed that he still intended to introduce "a formal separation ordinance for passage by the City Council." Id.; See also Court of Appeals App II, Ex 1(13).

As the Court of Appeals noted, City Council declined to amend the existing housing ordinance that had, after 1996, expressly continued to recognize the City's continuing relationship with DHC employees. App 32A-34A. As also admitted below, all DHC employees remained subject to the City's classification and compensation plans, the executive organization plan and the City housing ordinance, which explicitly subjected them "to the provisions of the Charter relative to civil service." App 33A-34A, 322A.

F. The Mayor And DHC Acknowledge On July 17, 2001 That They Needed City Council's Approval Of Their Proposed Amendments To The Executive Organization Plan And The City Housing Ordinance.

Although the mayor and DHC announced on July 17, 2001 that DHC would start to function as a completely separate employer effective September 21, 2001, they concurrently sought City Council's approval of this plan pursuant to the requirements of the Detroit City Charter. It is undisputed that, just as he had done in 1996, pursuant to City Charter requirements, the mayor submitted his "Summary of Amendment to the Executive Organization Plan" and accompanying proposed amendments to the organization plan and the City housing ordinance to City Council for review and approval. App 236A, 327A-339A.

G. City Council Rejects The Mayor's Proposals And Reaffirms The Continuation Of The City's Co-Employer Status.

On September 17, 2001 the City Council unanimously passed a resolution expressly rejecting the mayor's request:

> The Detroit City Council declares that no action has or will be taken by it, or will be recognized by the Detroit City Council to further separate the Detroit Housing Commission from the jurisdiction of the City of Detroit, through its mayor, its city council or its laws; and that the Detroit City Council declares its intention that all city employees currently assigned to the Detroit Housing Commission as members of the classified or unclassified service of the City pursuant to Section 6-517 of the Detroit City Charter shall remain members of classified and unclassified service for the City, and . . .
>
> The Detroit City Council declares that all current City employees assigned to the Detroit Housing Commission and all future employees hired by or on behalf of the Detroit Housing Commission shall retain all of the rights, benefits and duties of all employees of the City of Detroit under the laws of the State of Michigan, the Charters as amended or revised of the City of Detroit, the codes and ordinances of the City of Detroit and its rules, regulations and procedures as are or may be adopted. App 353A.

On September 26, 2001, the Detroit City Council unanimously enacted an ordinance which reiterated that:

> All Housing Commission employees shall be members of either the classified service or the unclassified service as is provided under Section 6.517 of the Charter of the City of Detroit, and shall be entitled to all rights of all employees of the City of Detroit, including but not limited to pensions and benefits. App 35A.

On October 3 and 10, 2001, by a vote of 9 to 0, the City Council overrode the mayor's vetoes of the City Council's resolutions and ordinances. App 35A, 163A.

H. In The Meantime The Mayor And DHC Tried To Unilaterally Repudiate The City's Employment Relationship With Housing Employees.

As conceded below, AFSCME had repeatedly demanded that the City and DHC bargain over any intended changes in the status of AFSCME-represented employees at DHC. App 201A. As subsequently found by the Michigan Employment Relations Commission, the City and DHC refused to provide AFSCME with requested information which, in part, resulted in the unfair labor practice and circuit court proceedings described below. App 25A, 151A-153A.

II. THE PROCEEDINGS

A. AFSCME's Complaints, The Stipulated TRO And The City Council Intervention.

On September 19, 2001 AFSCME filed a complaint in the Wayne County Circuit Court pursuant to 16(h) of the Public Employment Relations Act, MCL 423.201 et seq. ("PERA"), seeking to enjoin the City and DHC from repudiating the City's employment relationship with the AFSCME-represented employees assigned to DHC. App 1A, 35A. AFSCME's complaint sought a status quo injunction pending the adjudication of the September 18, 2001 unfair labor practice complaint that the Michigan Employment Relations Commission ("MERC") had issued against the City and DHC at AFSCME's request. App 35A.

Pursuant to the parties' agreement, on September 21, 2001 the trial court entered a Stipulation and Temporary Restraining Order, ordering that all AFSCME-represented DHC employees remain City employees pending a hearing on an order to show cause. App 13A.

On September 24, 2001, the City Council and all of its Council members (collectively "City Council") sought leave to intervene as plaintiffs in this action, App 1A. On October 12, 2001, the City and DHC filed an answer, briefs, affidavits and numerous exhibits, admitting virtually all

material allegations in AFSCME's complaint. App1A. On October 18, 2001, AFSCME filed a first amended complaint, adding Count II which sought injunctive and declaratory relief with respect to the meaning of the June, 1996 amendments to the Housing Act. App 1A, 131A.

On October 19, 2001 City Council filed its First Amended Complaint for Declaratory and Other Relief, joining in AFSCME's Count II request for temporary and permanent injunctive relief to maintain the City's employment relationship with DHC employees pursuant to the Housing Act and the City Charter. App 156A. Hearings were conducted on October 19, November 2 and November 15, 2001, where the trial court considered the parties' respective sworn affidavits, exhibits, briefs and arguments. App 17A. In the interim, the City and DHC filed an answer admitting virtually all of the allegations in AFSCME's first amended complaint. App 199A.

B. The Trial Court's November 15, 2001 Ruling And Its January 25, 2002 Declaratory Order.

On November 15, 2001 the trial court issued a declaratory ruling from the bench, finding that the 1996 Housing Act amendments did not in and of themselves sever the City's preexisting employment relationship with the DHC employees:

> I think that this Grand Rapids Employees Independent Union v City of Grand Rapids, at 235 Michigan Appeals 398 (1990) case is controlling in this matter. A reading of this case indicates that severance of the housing commission as an employer is permissive. The Housing Commission is not severed as an employer by operation of law. App 47A.

The trial court held that the Housing Act expressly authorized cities to continue their co-employer relationship with their housing commissions by allowing them to control housing commission employee classifications and compensation. The Act permitted cities to yield their classification and compensation authority to their housing commissions. If a city yielded that

authority, then its housing commission could become a completely separate employer. Reading from the Grand Rapids, supra, decision, the trial court held that:

> In the absence of a City resolution to the contrary, Housing Commissions are now permitted to fix the compensation of their employee - - employees. App 47A.

Additionally, the trial court found that the City had taken affirmative action to continue its co-employer status as recently as April, 2001, when the mayor proposed and City Council approved specific housing employee classifications and compensation ranges for the fiscal year July 1, 2001 through June 30, 2002:

> [W]hen the Council set the wages and - - and classifications of the employees, the City remained the employer of these employees, at least until 2002 or June 30th. App 48A.

Therefore, the trial court found that the City Council's subsequent resolutions confirming the City's employment relationship with DHC employees were consistent with the City's own actions and that Act:

> [I]t does not appear that - - the resolution retaining the employee - - the employer status would be in contravention of the statute. It appears that the statute provides for this action and that this authority was exercised. App 49A.

The trial court subsequently entered its January 25, 2002 declaratory order, finding that:

> The City of Detroit has exercised its authority pursuant to Public Act 338, the Michigan Housing Facilities Act, MCL 125.651 et seq., the Detroit City Charter and local ordinances of the City of Detroit at least through June 30, 2002 to establish employee compensation ranges and classifications to be used by the Detroit Housing Commission;
>
> All employees who currently work at the Detroit Housing Commission and all persons who were hired to work at the Detroit

> Housing Commission are and will be City of Detroit employees at least until June 30, 2002.
>
> It is therefore ordered that Plaintiff AFSCME's request for declaratory relief as set forth in Count II of its First Amended Complaint is granted. App 16A.

C. The Count II Summary Disposition Cross-Motions And The May 21, 2002 Order.

On February 15, 2002 the City and DHC filed Defendants' Motion for Summary Disposition on Plaintiffs' Request for Declaratory Relief, devoted entirely to Count II of AFSCME's complaint and the City Council complaint. App 214A. On March 11, 2002 AFSCME answered Defendants' Motion and filed a cross-motion for summary disposition on the same issue. App 3A. On March 15, 2002 City Council filed its Intervening Plaintiffs' Brief in Response to Defendants' Brief in Support of Motion for Summary Disposition and in Support of Plaintiffs' Cross-Motion for Summary Disposition as to Plaintiffs' Request for Declaratory Relief. App 3A. **None** of the cross-motions addressed Count I of AFSCME's complaint. App 112A.

Following hearings, on May 21, 2002, the trial court entered its declaratory order with respect to these cross-motions. App 21A. With respect to Count II of AFSCME's complaint, the declaratory order denied the City and DHC's summary disposition motion and granted AFSCME's cross-motion, finding that Grand Rapids, supra, controlled this case, that the Act reserved compensation and classification oversight over DHC employees to the City and that absent City Council action yielding unfettered authority to DHC, the City's co-employer relationship remained in place. App 21A. The trial court also entered an injunction prohibiting the City and DHC from taking action inconsistent with the declaratory order. Id.

The trial court issued **no** order with respect to Count I of AFSCME's amended complaint which had not been the subject of any summary disposition motion. App 1A-5A.

D. The Court Of Appeals' Decision.

On May 24, 2002 the City and DHC filed an Emergency Claim Of Appeal and Motion for Immediate Consideration in the Court of Appeals. App 7A. AFSCME opposed those requests, in part, on the ground that no final judgment had been entered below and that Count I was still pending in the trial court. App 7A, 33A. After briefing and oral argument, the Court of Appeals issued a July 23, 2002 decision reversing, in large part, the trial court's order and vacating its injunction. App 32A.

E. The Michigan Employment Relations Commission's Unfair Labor Practice Complaint Against The City And DHC.

As previously mentioned, on September 18, 2001 AFSCME had filed unfair labor practice charges against the City and DHC with the Michigan Employment Relations Commission ("MERC"). 25A, 153A. On the same day MERC issued a complaint against the City of the Detroit and DHC, Case No. C01 I-186, and set a hearing for October 10, 2001("the MERC Complaint"). App 25A. Because the MERC complaint was still awaiting MERC's disposition, it remained the subject of Count I of AFSCME's amended complaint in the trial court below. App 26A. Following hearings at MERC, on November 5, 2002 MERC issued its order adopting the recommended order of its administrative law judge, which had found that Appellees had "engaged in and [were] engaging in certain unfair labor practices" and recommended that Appellees be ordered to "cease and desist and take certain affirmative action as set forth" in the administrative law judge's recommended order. App 26A.

SUMMARY OF ARGUMENT

1. The Court of Appeals erroneously assumed jurisdiction of Appellees' claim of appeal below where :

a. The parties had only moved for summary disposition on Count II of AFSCME's first amended complaint;

b. The trial court's orders only addressed Count II of that complaint;

c. Count I of AFSCME's first amended complaint was still awaiting adjudication; and

d. There was no final order or judgment within the meaning of MCR 7.202(7) and 7.203(A)(1).

2. The Court of Appeals' decision, which retroactively held that the 1996 Amendments to Michigan's Housing Facilities Act ("Act"), MCL 125.651 et seq. severed City of Detroit's employment relationship with employees assigned to DHC "by operation of law," was erroneous where:

a. The Court of Appeals ignored the plain meaning of the Act which, while it expressly grants housing commissions unfettered authority in certain areas, the Act does **not** grant them independence with respect to employment issues and explicitly permit cities to control housing employee classifications and compensation;

b. The Court of Appeals' order **conflicts** with another decision of the Court of Appeals, Grand Rapids Employees Independent Union v City of Grand Rapids, 235 Mich App 398 (1999), where the Court of Appeals previously held that the 1996 amendments reserve housing employee compensation and classification authority to the city and that a housing commission is an independent employer only in the absence of a city resolution to the contrary;

c. The Court of Appeals disregarded and misstated the undisputed record below, which showed that the City affirmatively exercised its reserved compensation and classification role with respect to housing employees after 1996 when:

(i) The City continued to control housing employees' compensation and classifications;

(ii) Those employees have remained in the City executive organization plan;

(iii) Those employees have remained in the City pension and health benefits plans;

(iv) The City housing ordinance expressly continued to control their compensation and classifications; and

(v) The City Council's September and October, 2001 resolutions and amendments to the housing ordinance reaffirmed the City's employment relationship with housing employees;

d. The Court of Appeals failed to consider whether in the circumstances of this case - - where the employment relationship has admittedly continued after 1996 - - future changes in the status of housing employees could only be effectuated in accordance with the Act and Detroit City Charter, the latter of which defines the mayor and City Council's respective roles in that process; and

e. Although the City Council's recent ordinances and resolutions are consistent with the Act, even if they were not, the preexisting City housing ordinance, the existing compensation and classification plans and the existing executive organization plan, could only be amended by mayoral **and** City Council action pursuant to the City Charter.

ARGUMENT

I. THE STANDARD OF REVIEW.

Because the issues in this case are questions of law involving statutory interpretation, the standard of review is *de novo*. Putkamer v Transamerica Ins. Corp. of America, 454 Mich 626 (1997).

II. THE COURT OF APPEALS ERRED IN ASSUMING JURISDICTION WHEN THERE WAS NO FINAL JUDGMENT BELOW.

As the Court of Appeals' decision noted, MCR 7.203(A)(1) limits jurisdiction to appeals from final orders of a circuit court. As its decision also conceded, the term "final order" is the "first judgment or order that disposes of **all** the claims and adjudicates all the rights and liabilities of the

parties." MCR 7.202(7)(a)(i). The Court of Appeals clearly erred in accepting jurisdiction of the City's and DHC's appeal where the trial court had not yet adjudicated all claims below.

As the Court of Appeals conceded, Count I of AFSCME's amended complaint sought an injunction pursuant to Section 16(h) of the Public Employee's Relations Act ("PERA"), MCL 423.216(h). There, PERA authorizes the circuit court to maintain the status quo while the Michigan Employment Relations Commission ("MERC") decides related unfair labor practice charges. It is undisputed that (1) AFSCME filed an unfair labor practice charge against the City and DHC on September 18, 2001, asserting, in part that they had failed to provide AFSCME with requested information concerning DHC's proposed independent employer status; (2) that MERC issued a complaint pursuant to that charge; and (3) that Count I of AFSCME's first amended complaint sought an injunction pending resolution of that MERC complaint. While the parties entered into a September 19, 2001 stipulated temporary restraining order in the trial court with respect to Count I, no final order or judgment was ever entered with respect to Count I.

Moreover, although the City and DHC later moved for summary disposition with respect to Count II of AFSCME's first amended complaint, they did **not** do so with respect to Count I. App 213A. Nor did the trial court's subsequent January 25, 2002 or May 21, 2002 orders address, much less finally adjudicate, Count I. App 16A, 18A, 21A. Additionally, while MCR 2.602(A)(3) requires that the last trial court order recite that it disposes of the last pending claim and closes the case, none of the trial court's orders did so. Id.

Because Count I of AFSCME's amended complaint was not finally adjudicated in the trial court, the Court of Appeals had no jurisdiction over Appellees' claim of appeal. The Court of Appeals' comment that it could take jurisdiction anyway because AFSCME allegedly received

complete relief below has no basis in this record. At the time that the Court of Appeals reversed the trial court and vacated its status quo injunction on July 23, 2002, AFSCME's unfair labor practice charge was still the subject of MERC proceedings, which later resulted in a November 5, 2002 MERC order finding that the City and DHC had, in fact, violated PERA by refusing to provide AFSCME with requested information. App 26A. Where the Court of Appeals vacated AFSCME's status quo injunctive relief while Count I was still pending and the MERC proceedings were continuing, AFSCME cannot be considered to have been accorded all of the relief that it had sought in Count I. The Court of Appeals' ruling deprived AFSCME of the right to pursue its Count I status quo injunction pursuant to Section 16(h) of PERA.

Where AFSCME never withdrew Count I, where no party moved for its summary disposition, where the trial court never finally adjudicated Count I, and where the underlying PERA issues remained pending at MERC, it was error for the Court of Appeals to hold that the trial court's adjudication of Count II supported Appellees' claim of appeal pursuant to MCR 7.203(A)(1.)

III. THE COURT OF APPEALS' DECISION IS ERRONEOUS BECAUSE IT ENTIRELY DISREGARDS THE PLAIN MEANING OF THE HOUSING ACT.

The Court of Appeals' decision is clearly erroneous because it entirely disregards the plain meaning of the Housing Act. Contrary to the Court of Appeals' finding that the 1996 amendments in and of themselves and "by operation of law" imbued housing commissions with plenary employment authority, employment is an area in which housing commissions continue to have shared authority with their corresponding municipalities. As Court of Appeals conceded, while the Act established housing commissions as"public bodies corporate," it only granted them certain "**enumerated** independent powers and authorities." App 34A. (Emphasis added.) As shown below,

Sections 4 and 7 of the Act, which enumerate these specific areas of plenary authority, do **not** include employment. As is also evident from the Act and as shown below, Section 5 of the Act, which governs employment issues, expressly imbues municipalities with continuing authority over their housing commissions' employee classifications and compensation. As also discussed below, this limit on housing commission employment authority is also entirely consistent with the numerous other provisions of the Act which tie commissions to their municipalities.

A. Section 4 Of The Housing Act Does Not Include Independent Employer Status As A Public Body Corporate Attribute.

The Act's definition of "public body corporate" plainly does not include unfettered and independent employment authority. Section 4 of the Act, which recites housing commissions' "public body corporate" attributes, makes **no reference to employment**:

> The Commission shall be a public body corporate. Except as otherwise provided in this Act, the Commission may do all of the following:
>
> (a) Sue and be sued in any court of the state.
>
> (b) Form or incorporate nonprofit corporations under the law of this state for any purpose not inconsistent with the purposes for which the commission was formed.
>
> (c) Serve as a shareholder or member of a qualified nonprofit corporation organized under the laws of this state.
>
> (d) Authorize, approve, execute and file with the Michigan department of commerce those documents that are appropriate to form and continue one or more nonprofit corporations.
>
> (e) Form or incorporate for profit corporations, partnerships, and companies under the laws of this state for any purpose not inconsistent with the purposes for which the Commission was formed. MCL 125.654(5)(a)-(e).

Glaringly missing from this list of enumerated public body corporate powers is **any** reference to employer status. The plain language of Section 4 of the Act supports the trial court's determination that "public body corporate" status does not include independent employer authority merely by operation of law.

B. Section 7 Of The Housing Act Does Not Include Employment As An Enumerated Power.

Further supporting the trial court's decision is the plain language of Section 7 of the Act, which also enumerates housing commission powers and duties **without mentioning any employer functions**:

> Such commission shall have the following enumerated powers and duties:
>
> (a) To determine in what areas of the city or village it is necessary to provide proper sanitary housing facilities for families of low income and for the elimination of housing conditions which are detrimental to the public peace, health, safety, morals, and/or welfare;
>
> (b) To purchase, lease, sell, exchange, transfer, assign and mortgage any property, real or personal, or any interest therein or acquire the same by gift, bequest or under the power of eminent domain; to own, hold, clear and improve property; to engage in or to contract for the design and construction, reconstruction, alteration, improvement, extension, and/or repair of any housing project or projects or parts thereof; to lease and/or operate any housing project or projects;
>
> (c) To control and supervise all parks and playgrounds forming a part of such housing development but may contract with existing departments of the city or village for operation or maintenance of either or both;
>
> (d) To establish and revise rents of any housing project or projects, but shall rent all property for such sums as will make

them self-supporting, including all charges for maintenance and operation, for principal and interest on loans and bonds, and for taxes;

(e) To rent only to such tenants as are unable to pay for more expensive housing accommodations;

(f) To call upon other departments for assistance in the performance of its duties, but said departments shall be reimbursed for any added expense incurred therefor.

(g) Shall have such other powers relating to said housing facility's project as may be prescribed by ordinance or resolution of the governing body of the city or village or as may be necessary to carry out the purposes of the Act. MCL 125.657.

Contrary to the Court of Appeals' decision, the Act plainly does not include unfettered employment authority as a "public body corporate" attribute.

C. The Act Expressly Limits Housing Commissions' Powers.

Numerous other sections of the Act plainly show that housing commissions are not completely "independent" entities and that, rather, they remain subject to municipal control and oversight. For example, a housing commission can only exist where it has been created by the city, village, township or county. MCL 125.653. Once created by ordinance, a housing commission consists only of those members who are "appointed by the chief administrative officer of the city or village." MCL 125.654. A housing commission may only act as a borrower for purposes of issuing bonds or notes where it has been "empowered by ordinance of the creating governing body to act as a borrower," MCL 125.651(a)(ii). The Act obliges commissions to "make an annual report of its activities to the governing body" and to "make other reports as the governing body may from time to time require." MCL 125.659.

MCL 125.659 also requires that housing commissions report on their activities with respect to grants they receive and these reports be made "in a manner sufficient to allow the governing body to exercise the authority granted under this act to supervise the activities of the commission." The Act makes housing commissions dependent on cities with respect to eminent domain. MCL 125.660. The Act reserves the governing body's power to supervise a commission's execution of deeds, mortgages, contracts, leases, purchases or other agreements regarding real property, which may only be approved and executed "as specified by ordinance or resolution of the governing body." MCL 125.661.

The plain language of the Act shows that housing commissions are not imbued with every conceivable authority that a corporation, public or otherwise, might enjoy. Rather, the Act only grants housing commissions certain enumerated powers, sole employer status not being one of them, and reserves to the municipality a host of other shared rights and responsibilities. As shown below and as the trial court correctly found, two areas of explicitly **reserved** municipal power are housing employee compensation and classification.

D. Section 5 Of The Housing Act Expressly Reserves Classification And Compensation Employment Powers To The City.

As the trial court correctly found, Section 5, which governs housing commission employment, does **not** automatically give housing commissions unfettered employment authority. While continuing the pre-amendment language that a commission "may employ and fix the compensation of a director, who may also serve as a secretary, and other employees as necessary," Section 5 **expressly reserves important employer attributes to the municipality**:

> Upon the recommendation of the appointing authority [defined as the "chief administrative officer of the city or village" MCL 125.654], the

> governing body of an incorporating unit [defined as "the council or commission of the city" MCL 125.651] may adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a commission upon the approval of the governing body or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees. MCL 125.655(3).

Thus, the Court of Appeals erred when it found that the 1996 amendments in and of themselves automatically completely "severed" the City's employment relationship with DHC employees. Rather, Section 5 of the Housing Act expressly and plainly **reserves** a city's authority to control housing commission employees' compensation and classifications. The express language of Section 5 defeats the City and DHC's arguments that DHC is a "separate and independent" employer "by operation of law." Contrary to the Court of Appeals' July 23, 2002 decision, the Act expressly permits a city to continue to exercise its employment authority over housing employees.

IV. THE ORDER IS CLEARLY ERRONEOUS BECAUSE IT FAILS TO FOLLOW A PREVIOUS COURT OF APPEALS DECISION AND VIOLATES MCR 7.215(I)(1).

The Court of Appeals' decision is also clearly erroneous because it did not follow the rule of law established in Grand Rapids Employees Independent Union v City of Grand Rapids, 235 Mich App 398 (1999), which interpreted the meaning of Section 5 of the Act. App 398A. While noting that the 1996 amendment had enhanced housing commissions' powers, the Court of Appeals in Grand Rapids, supra, held that a housing commission only becomes a separate and distinct employer where a city yields its Section 5 employment authority to its housing commission. The Court of Appeals in this case barely acknowledged Grand Rapids, supra, and, with no elucidation whatsoever, summarily declared it "distinguishable" in a footnote. See App 37A-38A, n 2. In fact,

Grand Rapids, supra, the only case interpreting the 1996 amendments, is squarely on point and should have been followed.

A. The Grand Rapids Case Is On Point.

In Grand Rapids, supra, as in this case, the city had a housing commission that pre-dated 1996 and that employed city employees. As in this case, the city's executive, there the city manager, proposed that the city council amend the existing ordinance to transfer all employment authority from the city to the housing commission. App 433A. The Grand Rapids City Council, in contrast to the Detroit City Council, **agreed** to the city manager's proposal to amend the existing ordinance to yield all employment authority to the housing commission. App 445A. The question then presented in Grand Rapids was whether the City of Grand Rapids and the Grand Rapids Housing Commission remained co-employers in these circumstances.

The Court of Appeals in Grand Rapids started its analysis by comparing the Act before and after its amendment. The pre-1996 version of MCL 125.655(3) read:

> A president and vice-president shall be elected by the commission. The commission may appoint a director who may also serve as a secretary and other employees or officers as are necessary. The commission shall prescribe the duties of its officers and employees and, with the approval of the appointing authority, may fix their compensation. The commission may employ engineers, architects and consultants, when necessary. MCL 125.655(3) (pre-amendments); App 444A.

After the 1966 amendment, the same section read:

> A president and vice-president and other officers designated by the commission shall be elected by the commission. The commission may employ and fix the compensation of a director, who may also serve as a secretary, and other employees as necessary. Upon the recommendation of the appointing authority, the governing body of an incorporating unit may adopt a resolution either conditioning the

> establishment of any compensation of an officer or employee of a commission upon the approval of the governing body or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees. The commission shall prescribe the duties of its officers and employees and shall transfer to its officers and directors those functions and that authority which the commission has prescribed. The commission may employ engineers, architects, attorneys, accountants and other professional consultants when necessary. MCL 125.655(3); App 444A-445A.

In interpreting the amendment, the Grand Rapids Court of Appeals noted that under the pre-act language, "[a] housing commission was not a separate employer, but rather a co-employer, with the incorporating unit" because it did not have the independent "authority to fix the compensation of its employees without approval of the appointing authority." Grand Rapids, 235 Mich App at 404; App 444A. Thus, because the power to fix compensation is a key attribute of employer status, the city was a co-employer with the housing commission under the old Act.

Turning to the 1996 amendments, the court in Grand Rapids interpreted the new language to mean that housing commission are now "permitted to fix the compensation of their employees," **unless** there is a city resolution to the contrary. 235 Mich App at 405; App 405A. As the Court of Appeals expressed this, "in the absence of a city resolution to the contrary, housing commissions are now permitted to fix the compensation of their employees." Id. In other words, MCL 125.655(3) reserves the right of the city to continue to control housing employee compensation and classifications, but also permits the cities to yield that authority entirely to their housing commissions, if the cities so choose.

Obviously, the Grand Rapids case is on point and its rule of law should have been followed by the Court of Appeals below.

B. The Grand Rapids Case Was Correctly Decided.

The conclusion in Grand Rapids was, of course, consistent with the language of the 1996 amendments which provides that a "governing authority" may still "adopt a resolution either conditioning the establishment of any compensation of an officer or an employee of a commission upon the approval of the body governing body or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its offices and employees." MCL 125.655(3). Thus the Grand Rapids court was right to decide that in the absence of a city resolution controlling housing employee compensation and classifications, the housing commissions could now act independently.

As previously noted, in Grand Rapids, the city council voted to amend their ordinance to yield the employment authority entirely to the housing commission. From that point forward, that housing commission was free to independently establish compensation ranges and classifications. As the Grand Rapids Court of Appeals noted, this city council decision to yield that authority was permitted by the 1996 amendments:

> [A]s provided for in the current version of MCL 125.655(3), MSA 5.3015(3), **Grand Rapids has passed an ordinance concerning selection and payment of the housing commission's employees**. This ordinance, passed in August 1997, states:
>
> > The Grand Rapids Housing Commission may appoint a director who may also serve as Secretary, and other employees or officers as are necessary. The Grand Rapids Housing Commission shall prescribe the duties of its officers and employees and shall have the sole authority to fix their compensation and fringe benefits, and terms and conditions of employment. [Grand Rapids Ordinance, Ch. 8, Art. 5, §1.356.] 235 Mich App at 405-406; App 405A-406A. (Emphasis added.)

Expressly relying upon the fact that the city council **agreed** to amend its existing ordinance to permit its housing commission to act as the sole employer, the Court of Appeals in Grand Rapids, supra, found that the housing commission had become a separate and independent employer:

> [W]e find that in light of the current version of MCL 125.655(3), MSA 5.3015(3), **and** the Grand Rapids ordinance granting the power to the housing commission to set the terms and conditions of employment for its employees, there is no longer a question that the housing commission is an employer, separate and distinct from Grand Rapids. (Emphasis added). 235 Mich App at 407; App 447A.

Its decision was entirely consistent with the express language and the plain meaning of the Act.

C. The Trial Court Appropriately Applied The Law Of Grand Rapids.

The trial court in this case correctly applied Grand Rapids, supra, in determining that the Act did not sever the co-employer relationship between the City and DHC by operation of law. Rather the Act, by its plain terms, reserves to the City the right to maintain its co-employer relationship with housing commission employees by virtue of the language authorizing it to control those employees' classifications and compensation. The trial court also correctly held that where the City has admittedly continued to exercise its statutory co-employer authority over classifications and compensation after 1996, it remained a co-employer of housing commission employees.

As the trial court correctly found, while both the Grand Rapids and the Detroit chief executives asked their respective city councils to amend their respective ordinances to yield their cities' respective employment authority, unlike the Grand Rapids City Council, the Detroit City Council **rejected** the Mayor's proposed ordinance amendments. App 33A-34A. In contrast to the facts in Grand Rapids, it is undisputed that the Detroit City Council resoundingly:

1. Rejected the mayor's July 17, 2001 proposals to amend his executive organization plan and to approve proposed amendment to the housing ordinance which would have yielded employment authority to DHC;

2. Passed resolutions reaffirming the City's employment relationship with DHC employees;

3. Passed an ordinance reiterating the City's employer relationship with housing employees; and

4. Unanimously, by a vote of 9 to 0, overrode the mayor's attempts to veto those resolutions and ordinances. App 162A-198A.

Assessing these undisputed facts in the framework of the Grand Rapids decision, the trial court correctly held that City of Detroit has not yielded its employment powers to the DHC. As the Court of Appeals said in Grand Rapids, supra, "in the **absence** of a city resolution to the contrary, housing commissions are now permitted to fix the compensation of their employees." 398 Mich App at 405; App 445A. (Emphasis added.) The City of Detroit clearly did not have an absence of such a resolution. Rather, it had a host of resolutions, both old and new, reaffirming the City's continuing exercise of its right to establish housing commission employee classifications and compensation pursuant to MCL 125.655(3).

The trial court also correctly applied the law of Grand Rapids in determining that because the power to control employee compensation and classification is an essential employer attribute, the City's exercise of that power after 1996 continued its status as a co-employer of housing commission employees. As noted above, the Court of Appeals in Grand Rapids, supra, held that prior to the 1996 amendments, all housing commissions and their corresponding municipalities were co-employers as a matter of law because all municipalities had authority over employee classifications and compensation. ("In the absence of this authority [to determine classifications and wages] a housing commission was not a separate employer, but rather a co-employer with the incorporating unit." 398 Mich App at 404; App 444A.) The trial court correctly found that because

the 1996 amendments permitted the City to continue to exercise that authority over classification and compensation, when it did so between 1996 and 2002, it continued its co-employer status.

D. The Court Of Appeals Was Bound To Follow The Grand Rapids Precedent Pursuant To MCR 7.215(I)(1).

The Court of Appeals erred in failing to apply Grand Rapids, supra, to the undisputed facts in this case. MCR 7.215(I)(1) provides that:

> A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court or by a special panel of the Court of Appeals as provided in this rule.

As the Grand Rapids case was a published decision, was issued after November 1, 1990 and has not been modified or reversed, the Court of Appeals was not free to disregard it. Its failure to follow this rule of law was error.

V. THE COURT OF APPEALS' ORDER IS CLEARLY ERRONEOUS BECAUSE ITS "BY OPERATION OF LAW" ANALYSIS RENDERS SECTION 5 A NULLITY.

In reversing the trial court, the Court of Appeals relied upon the following language in Section 5 of the Act:

> Upon the recommendation of the appointing authority, the governing body of an incorporating unit may adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a commission upon the approval of the governing body or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees. MCL 125.655 ("Section 5").

It found that this language means that it is entirely up to the mayor to determine whether or not DHC employees remain City employees. However, the court's analysis is erroneous for two reasons.

First, as discussed below, its analysis does not take into account the current status of DHC employees - - which is the product of seven years of mayoral proposals, executive plans, the City ordinance, and previous City Council actions pursuant to Charter between 1996 and the present. As shown below, the undisputed mayoral and City Council actions - - both before and after the Act was amended in 1996 - - admittedly continued the City's status as co-employer of housing employees. In this context, just as in Grand Rapids, the City must follow its own Charter in order to amend these ordinances and plans.

Second, the Court of Appeals stated interpretation renders Section 5 a nullity. As this Court has held:

> It is a maxim of statutory construction that every word of a statute should be read in a such a way as to be given meaning, and a court should avoid a construction that would render any part of the statute surplusage or nugatory. *In re MCI Telecommunications Complaint*, 460 Mich 396, 414 (1999).

If, as the Court of Appeals has held, the 1996 amendments, in and of themselves and "by operation of law" extinguished the co-employment relationship between the City and DHC, it would be logically impossible for Section 5 of the Act to have any meaning whatsoever. After all, if the entire employment relationship between the City and DHC was completely and automatically severed in 1996 when the amendments were passed, how could Section 5 permit the cities to control compensation and classification of housing employees? If there was no remaining employment relationship, the governing body could not establish binding classification or compensation schedules for housing employees.

The language, on the other hand, can only have meaning if the Grand Rapids decision and the trial court were correct in holding that the 1996 amendments **reserved** the governing body's

authority over housing employees, but also made it possible for the governing body to relinquish that authority to the housing commission.

The Court of Appeals' decision is, for this additional reason, clearly erroneous. The express language of Section 5 of the Act, which plainly continues City's employment authority over housing employees' classification and compensation, simply cannot be reconciled with the Court of Appeals' holding that employment relationships were severed in 1996 "by operation of law."

VI. THE COURT OF APPEALS ERRED WHEN IT IGNORED THE UNDISPUTED RECORD AND FAILED TO TAKE INTO ACCOUNT THE CITY'S OBLIGATION TO USE THE DETROIT CITY CHARTER PROCEDURES TO CHANGE THE FUTURE STATUS OF DHC EMPLOYEES.

A. The Court Of Appeals Erred In Ignoring The Undisputed Record.

The Court of Appeals also erred when it found that the trial court had merely relied on a 2001 "lump sum" budget for its finding that the City had continued to exercise control over housing employees' compensation and classifications. In fact, in addition to the inclusion of the housing employees in the City's executive organization plan and housing ordinances, the record reflected that the mayor had proposed specific DHC compensation and classifications in **every single year between 1996 through June 30, 2002**. App 215A. Further, it is undisputed below that the budgets were **not** lump sum - - but rather - - they **specifically** recited each housing classification and each specific compensation. App 215A-235A.

It was the additional undisputed fact that the mayor had submitted and City Council had approved specific compensation and classifications for all housing employees through the June 30, 2002 fiscal year, that resulted in the trial court's January 25, 2002 order that employees assigned to DHC remained City employees at least through June 30, 2002:

> The City of Detroit has exercised its authority pursuant to Public Act 338, the Michigan Housing Facilities Act, MCL 125.651 et seq., the Detroit City Charter and local ordinances of the City of Detroit at least through June 30, 2002 to establish employee compensation ranges and classifications to be used by the Detroit Housing Commission;
>
> All employees who currently work at the Detroit Housing Commission and all persons who were hired to work at the Detroit Housing Commission are and will be City of Detroit employees at least until June 30, 2002.
>
> It is therefore ordered that Plaintiff AFSCME's request for declaratory relief as set forth in Count II of its First Amended Complaint is granted. App 18A.

Because the City argued that the mayor could unilaterally sever its co-employer relationship with housing employees after the end of the fiscal year on June 30, 2002, the trial court invited the parties to brief that question, which the parties did by way of their Count II summary disposition cross-motions. As the trial court then ruled on May 21, 2002, the mayor could not act unilaterally after June 30, 2002 because the City Charter does not permit him to act unilaterally and requires City Council action to amend ordinances and organization plans.

B. The City Charter Also Precludes The Mayor From Unilaterally Amending City Ordinances, The Executive Organization And Other City Plans.

As discussed above and as found by the trial court, the City remained a co-employer of housing employees by virtue of the pre-existing City ordinance and the City's compensation, classification and organization plans. Indeed, the mayor's July 17, 2001 submissions to City Council showed that the City's existing housing ordinance continued to expressly include housing employees in the City's civil service classification system:

> The Housing Commission may appoint a director, who may also serve as a secretary and, in accordance with the provisions of the

> Charter relative to civil service, such other employees as it may deem necessary. Preexisting City Ordinance, §14-5-3. App 322A.

As the parties conceded below, City ordinances may only be amended by City Council action. Article 4 of the City Charter, entitled "The Legislative Branch," requires that proposed ordinances be presented to City Council. Id. at §4-115. City Charter §§ 4-101 through 4-115. App 381A. As was also undisputed, city plans may also only be changed in accordance with the provisions of the City Charter:

> When this Charter takes effect, all executive and administrative agencies and functions existing under the 1974 Charter or by ordinance or resolution and not superseded by this Charter shall continue with the force and effect of ordinance until superseded by action taken under §7-102 or 7-104. App 397A-398A.

City Charter section 7-102, in turn, provides that while the mayor can propose amendments to the executive organization plan, City Council may disapprove the mayor's proposed organizational changes by a two-thirds vote:

> Sixty (60) business days after the filing of the plan with the city council, it shall become effective, with such modifications as are accepted by the mayor, **unless disapproved by a resolution adopted by a two-thirds (2/3) majority of city council members serving.** All amendments to the plan must originate with the mayor and are subject to the same procedure taking effect. City Charter, 7-102, App 398A.

As the trial court also correctly found, the mayor and DHC's conduct also showed their understanding that in order to alter the City's employment relationship with housing employees, they needed to proceed in accordance with the City Charter. Thus, on July 17, 2001, the mayor asked City Council to amend the existing housing ordinance by striking the phrase, "and in accordance with the provisions of the Charter relative to civil service." App 322A. As is undisputed, the City

Council, exercising its powers under the City Charter, unanimously rejected that proposal. App 34A-35A. Instead, in September and October, 2001, it unanimously passed amendments to the housing ordinance and resolutions which reaffirmed the existing employment relationship between housing employees and the City. App 162A-198A. The mayor similarly conceded his inability to unilaterally amend the executive organization plan when he submitted his proposed plan amendments to City Council on July 17, 2001 - - which City Council also unanimously rejected. App 162A-198A, 352A-366A. As these mayoral submissions show and as the City Charter provides, the mayor had no power to unilaterally change either City housing ordinance or the City plans.

The Court of Appeals, as noted above, reversed the decision of the trial court with respect to some the ordinances promulgated by City Council in the fall of 2001, AFSCME will not brief that issue because it will be addressed in the City Council's separate brief in appeal in this case. But even *assuming arguendo* that the Court of Appeals' decision on that issue were to be sustained by this Court, the City housing ordinance and City plans would then revert to their pre-September, 2001 status. As the trial court correctly found, those ordinance and plans made the City a co-employer of housing employees. Thus, even of some of the recent City Council ordinance were to be struck down, the mayor would still have to follow the City Charter procedures to end the City's admitted exercise of its authority over housing employees' classifications and compensation.

As in Grand Rapids, supra, the city executive can not unilaterally hand-over the city's employment authority to its housing commission. Rather, as in Grand Rapids, supra. the transfer of authority can only be accomplished when the City Council acts. As the Court of Appeals held in that case, "**[i]n the absence of a city resolution** to the contrary, housing commissions are now

permitted to fix the compensation of their employees." 235 Mich App at 405; App 405A. (Emphasis added.) As the trial court correctly found, that "city resolution" can only be accomplished by way of City Council action pursuant to the City Charter. Absent that City Council action, the City remains a co-employer of housing employees because the City Charter requires both mayoral **and** City Council action to change an ordinance or a City plan.

C. The City Charter Is Entitled To Full Force And Effect.

The City Charter is entitled to full force and effect. As the Michigan Supreme Court held in City of Detroit v Walker, 445 Mich 682, 691 (1994), "[T]he powers of the city under the charter shall be construed liberally in favor of the city." The Michigan Constitution mandates that "Home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied. Home rule cities are empowered to form for themselves a plan of government suited to their unique needs and, upon local matters, exercise the treasured right of self-governance. See Const. 1963, Art. 7, §22." Id. at 690. Thus, unless there is an express conflict between a state statute and the city charter or unless the state statute explicitly denies the city the power to exercise a function spelled out in its charter, the charter must be enforced. Michigan Restaurant Association v City of Marquette, 245 Mich App 63 (2001).

In this case there is no such conflict or express denial. Rather, the statute merely states:

> Upon the recommendation of the appointing authority, the governing body of an incorporating unit may adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a commission upon the approval of the governing body or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees. MCL 125.655.

This language is not in the least inconsistent with the Detroit City Charter, which also provides that "The mayor shall prepare an executive organization plan" and that "all amendments to the plan must originate with the mayor." Charter, §7.102, App 398A. The City Charter puts an affirmative obligation on the mayor to prepare and originate an executive organization plan and related amendments. Indeed, the mayor recognized this obligation when he submitted an amendment to City Council on July 17, 2001 which sought to change the DHC employees' City employment status.

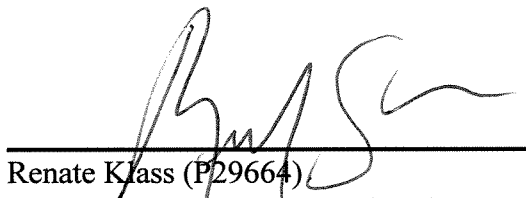
Similarly, the Charter's §7.102 language, empowering the City Council to "study and conduct hearings on the plan," to "request the mayor to make modifications on it" and to reject it by a two-thirds majority vote is completely consistent with the Housing Act. App 398A. As noted above, Section 5 of the Act expressly authorizes the "governing body of an incorporating unit" to adopt resolutions, "establishing compensation ranges and classifications to be used by a commission." MCL 125.655(3). As the Court of Appeals in Grand Rapids, supra, and the trial court now have both held, this language means that City Council is statutorily authorized to determine whether to continue the existing compensation and classification plans. Similarly, the City Charter's provision that ordinances can only be amended by vote of City Council is not in conflict with the Act. App 381A-382A. Indeed, that very process was respected and enforced by the Court of Appeals in Grand Rapids, supra.

As the Court of Appeals held in Grand Rapids Employees Independent Union, supra, Section 5 of the Housing Act permits city councils to either grant or withhold full employer status from housing commissions. MCL 125.655(3). The Court of Appeals clearly erred here when it failed to follow this precedent.

CONCLUSION AND RELIEF REQUESTED

For all the foregoing reasons, Plaintiffs-Appellants Michigan AFSCME Council 25, AFSCME Local 23 and AFSCME Local 2394 respectfully request that the Court reverse and vacate the July 23, 2002 decision of the Court of Appeals and award Appellants their costs and fees and such other relief as the Court deems appropriate.

MARTENS, ICE, GEARY, KLASS,
LEGGHIO, ISRAEL & GORCHOW, P.C.



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